



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

JAN 25 2018

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Noal White
9599 Horseshoe Island Drive
Clay, New York 13041

Re: Request for Information Pursuant to Section 308 of the Clean Water Act,
33 U.S.C. Section 1318(a)
Property at or near 9599 Horseshoe Island Road, Town of Clay, Onondaga County, NY

Dear Mr. White:

The U.S. Environmental Protection Agency ("EPA"), Region 2, is investigating a complaint alleging a violation of the Clean Water Act ("CWA"), involving unauthorized discharges of fill material in wetlands abutting the Oneida River, on your property at tax parcel 013.-01-49.1 (Town of Clay, Onondaga County, NY) with a primary address 9599 Horseshoe Island Road, Clay, NY ("the Property").

An enforcement liaison for EPA, Aaron C. Smith, of the U.S. Army Corps of Engineers, performed an inspection of the Property on December 1, 2017. He observed that the Property contained wetlands that are considered to be waters of the United States under Federal jurisdiction. Furthermore, he observed that significant amounts of fill material have been discharged into those waters. Section 404 of the Clean Water Act requires that proper authorization (i.e., a permit) be obtained from the U.S. Army Corps of Engineers ("the Corps") for the discharge of dredged or fill material from a point source into waters of the United States. The Corps has not issued a permit for the discharge. Therefore, you are strongly advised to cease any grading or filling activities in waters of the United States at the Property.

This letter is a formal request for information from you for EPA's use in investigating this matter. We are making this request pursuant to Section 308 of the CWA, as described in the "Statutory Authority and Directions for Response," below. The specific information which EPA requests is listed in an attachment to this letter titled "Clean Water Act Section 308 Information Request for Noal White, regarding property located at or near 9599 Horseshoe Island Road, Clay, NY; Tax Parcel 013.-01-49.1, Town of Clay, Onondaga County, NY". You are legally required to respond to this request within thirty (30) days of receipt of this letter. Please provide all of the information listed in the attachment, as directed below.

Statutory Authority and Directions for Response

The CWA, 33 U.S.C. §1291 *et seq.*, confers jurisdiction which covers "navigable waters" which are defined as "waters of the United States" (33 U.S.C. §1362(7)). Section 301(a) of the CWA, 33 U.S.C. §1311(a), prohibits the discharge of pollutants except as in compliance with Sections 301, 302, 306, 307, 318, 402, and 404 of the CWA. Section 404 of the CWA, 33 U.S.C. §1344, states that permits may be required from the Department of the Army for the discharge of dredged or fill material into navigable waters at specified disposal sites. Dredged or fill material constitute "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. §1362(6), and the discharge of such material in waters of the United States constitutes a "discharge of pollutants" as defined by Section 502(12) of the CWA, 33 U.S.C. §1362(12). Therefore, the observed fill material discharged in waters of the United States that may be present at the Property, without prior authorization from the Department of the Army pursuant to Section 404, may constitute a violation of Section 301(a) of the CWA, 33 U.S.C. §1311(a).

Section 308(a)(A) of the Clean Water Act, 33 U.S.C. §1318(a)(A), provides that whenever required to carry out the objectives of the CWA, including determining whether or not a person/agency is in violation of the CWA, the Administrator of EPA shall require that person/agency to provide such information as may reasonably be required to make such a determination. Therefore, pursuant to the authority vested in the Administrator of EPA under Section 308(a) of the CWA, 33 U.S.C. §1318(a), which authority has been duly redelegated to the undersigned, it is hereby requested that you provide the information requested in the "ATTACHMENT" enclosed with this letter within thirty (30) calendar days of receipt of this letter.

Failure to respond to this information request may subject you to enforcement action pursuant to Section 309 of the CWA, 33 U.S.C. §1318(a), in which injunctive relief and penalties may be sought.

Please be informed that you may, if you so desire, assert a business confidentiality claim covering all or part of the information being requested. The claim may be asserted by placing on (or attaching to) the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," "proprietary," or "company confidential." Allegedly confidential portions or otherwise non-confidential documents should be clearly identified, and may be submitted separately to facilitate identification and handling by EPA.

If you desire confidential treatment only until a certain date or until the occurrence of a certain event, the notice should so state. Information covered by such claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in Subpart B, Part 2, Chapter I of Title 40 of the CFR (40 CFR 2.201 *et seq.*). If no such claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to you.

This information is not subject to the approval requirements of the Paperwork Reduction Act of 1989, 44 U.S.C. §3501 et seq.

The requested information should be sent to:

Mr. Aaron C. Smith
EPA Enforcement Liaison
c/o U.S. Environmental Protection Agency, Region 2
U.S. Army Corps of Engineers
7413 County House Road
Auburn, New York 13021

If you have any questions or comments regarding this matter, please Mr. Smith at (716) 879-4120.

Sincerely,

A handwritten signature in dark ink, appearing to read 'R P Balla', with a long horizontal flourish extending to the right.

Richard P. Balla, Chief
Watershed Management Branch

Enclosure

ATTACHMENT

Clean Water Act Section 308 Information Request for Noal White,
Regarding property located at or near 9599 Horseshoe Island Road, Clay, NY;
Tax Parcels 013.-01-49.1, Town of Clay, Onondaga County, NY

In the questions below, "you" means Noal White. The "Property" means the property located at or near 9599 Horseshoe Island Road, Clay, NY; Tax Parcel 013.-01-49.1, Town of Clay, Onondaga County, NY. "Work" means the placement of fill material related to the Property.

Please provide the following related to the Work at the Property:

1. A description of current ownership of the Property and recent (past five years) ownership history.
2. A description of the nature and the purpose of the Work at the Property.
3. A list of the dates on which the Work was performed.
4. A list of the names and titles of persons who conducted and/or gave orders for, or had oversight over the Work, and describe each person's role in the Work, including the names of contractors and/or construction companies who conducted and/or gave orders for, or had oversight over, the Work.
5. A copy of an applications and construction/engineering plans submitted to the Town of Clay, and any other local, state, or county agencies, for permits or other authorizations for the Work.
6. A copy of any permits, approvals, certifications, and/or exemptions obtained from any Federal, State, local, or other agency related to the Work.
7. The source, volume, and type of fill material discharged.
8. The size and dimensions of the area(s) where fill material has been discharged.
9. A description of the manner in which the Work was conducted, including the type of equipment used in conducting the Work.
10. Copies of any correspondence or information which you have with or from any Federal, State, local, or other agencies relating to the status of portions of the Properties as wetlands, streams, or as areas of environmental or ecological significance.
11. Copies of any aerial photographs, surveys, reports, maps or plans depicting the pre-existing vs. current conditions, topography, soils, and hydrology at the Property.

